

Attorney Docket No.: 47234-0003-00-US
Application No. 10/500,841
Reply to Office Action Dated: July 11, 2008
Amendment Dated: December 11, 2008

REMARKS

The amendments are made without prejudice or disclaimer of the canceled subject matter. Applicants reserve the right to file a continuing or divisional application on any subject matter canceled by way of amendment. Reconsideration and reexamination of the present application are respectfully requested in light of the foregoing amendments and following remarks.

1. Status of the Claims

The status of the claims following entry of the amendment is as follows:

Claims canceled: Claims 1-5, 8-22, and 28

Claims pending: Claims 6-7, 23-27, and 29-30

Claims allowed: Claims 6, 25-27, and 29

Claims rejected: Claims 7, 24, 28, and 30

Claims withdrawn: Claim 23

2. Support for the Amendments

The amendment to claims 7 and 24 is supported in the specification, for example, at p. 17, line 29, through p. 18, line 18 and p. 19, lines 12-22; p. 18, line 2 (wound healing); and p. 18, line 21 (arteriosclerosis). The amendment to claim 30 is supported, for example, by the language of claim 25.

3. Request for Rejoinder

Applicants appreciate the withdrawal of the restriction requirement mailed Feb. 19, 2008. Claim 23 remains withdrawn as directed to non-elected subject matter, following an earlier restriction requirement mailed Dec. 16, 2005. Because claim 23 is a method of using the polypeptide fragment of allowed claim 25, Applicants respectfully request rejoinder and examination of claim 23 pursuant to the Office's rejoinder policy stated in MPEP § 821.04(b).

4. Objections to the claims

The Office objects to claim 24 as substantially duplicative of claim 7. The Office alleges that differences between the claims recited in the preambles do not sufficiently

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distinguish the claims from each other. Claims 7 and 24 are amended to differ in the body of the claims. The Objection accordingly should be withdrawn.

5. Rejections under 35 U.S.C. § 112, Second Paragraph

Claim 28

Claim 28 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claim 28 is presently canceled, mooted the rejection.

Claims 7, 24, and 30

Claims 7, 24, and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Office alleges that “pharmaceutically effective amount” is unclear, because the claim does not recite the purpose for the recited amount. The claims are presently amended to clarify that the claimed compositions comprise an amount of the recited polypeptide fragments sufficient to promote wound healing, treat arteriosclerosis, or accelerate neovascularization, respectively. The claims are definite, and the rejection accordingly should be withdrawn.

6. Rejection under 35 U.S.C. § 112, First Paragraph (New Matter)

Claims 7, 24, and 30 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly incorporating impermissible new matter. Applicants traverse the rejection.

The Office alleges that there is no support for the phrase “pharmaceutically effective amount.” The presently claimed compositions comprise an amount of the recited polypeptide fragment sufficient to promote wound healing, treat arteriosclerosis, or accelerate neovascularization, respectively. The specification discusses at length the amounts of a pharmaceutical composition to administer to promote wound healing, treat arteriosclerosis, or accelerate neovascularization. *See, e.g.*, the specification at p. 17, line 29, through p. 18, line 18 and p. 19, lines 12-22 (effective amount); p. 18, line 2 (wound healing); and p. 18, line 21 (arteriosclerosis). The disclosure thus conveys with reasonable clarity to the skilled artisan that Applicant was in possession of the invention as of the filing date. *See Vas-Cath, Inc. v.*

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Mahurkar, 935 F.2d 1555, 1563-64, 19 U.S.P.Q.2d 1111, 1117 (Fed. Cir. 1991). The claims thus do not enter impermissible new matter, and the rejection accordingly should be withdrawn.

7. **Withdrawal of Rejections and Indication of Allowable Subject Matter**

Applicants appreciate the withdrawal of the remaining rejections and the Office's indication of allowable subject matter.

CONCLUSION

Should the Examiner have any questions or comments regarding Applicants' amendments or response, he is asked to contact Applicants' undersigned representative at the telephone number below. Please direct all correspondence to the below-listed address.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0573. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is respectfully requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Date: December 11, 2008

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